

Waqf Land Administrations- A Comparative Studies between State Islamic Religious Councils (SIRCS) Of Johor and Selangor

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WAQF LAND ADMINISTRATIONS – A COMPARATIVE STUDIES BETWEEN STATE ISLAMIC RELIGIOUS COUNCILS (SIRCS) OF JOHOR AND SELANGOR

ABSTRACT

Waqf is an Islamic concept of trust when an owner donates a land or property for a specific or general welfare of Muslim community. The prominent issues to confront is the abandonment and undeveloped of waqf land. The development of waqf land in Malaysia is limited to the provision of mosque, cemetery, surau and religious school. This has hindered waqf property from generating income that can benefit the Muslim society in this country. Therefore, there is a need to establish a new approach and strategy in creating an administrative system that is innovative, efficient and reflective to the current situation of economic development in Malaysia. This change is essential to guarantee the successful management of waqf land that will contribute to the enhancement of ummah's socio-economy. This achievement will alter the perception of the society about the traditional waqf practices. This research will highlight the issues, challenges and strategies related to the waqf land especially the trustee in administering, managing and developing the waqf land. This research also underlines the potential embrace by the waqf land if it is developed to its best and highest use according to the waqf law.

Keywords: Waqf, State Islamic Religious Council (SIRC), Issues, Strategies

1. INTRODUCTION

Basically waqf land plays a significant role in the provision of economy and social benefits towards the Muslims society. Waqf land development can generate working opportunity, housing as well as commercial property that can be utilised for Muslims and Islamic charity purposes. In contrast to this, waqf land currently plays a limited role towards contributing to Malaysia's socio economic development. Numerous research and studies have been executed concerning the issues and problems of waqf land in Malaysia. Several studies focus on the lack of managerial efficiency while others contemplated on the legal issues surrounding the land. There are also several contributions made on the efficacy of the database management. From the previous researches, it was suggested that improved management in increasing economic yield of waqf land can lead to more income for the State Islamic Religious Council as a trustee. With that fund the council could move forward as an institute that contributes to the well being of the Muslims' socio-economic.

2. DEFINITION

Kuwait Waqf Public Foundation defines waqf as the following;

Linguistically speaking, waqf means **retention** and **withholding**, but as far as jurists (Faqihs) are concerned, the term means withholding an asset and getting it out of anybody's property so that it cannot be sold, granted or bequeathed. Another definition of waqf is withholding the assets on the waqf's property, while releasing the usufruct. An asset here indicates the corpus which may be a house, an orchard, cash money or otherwise.

3. LEGALITY OF WAQF

The majority of Muslim scholars are of the opinion that the waqf is both lawful and recommended, based on general and specific evidence. As for general evidence, they consider it as an act of charity which is greatly encouraged by both the Qur'an and the Sunnah. The prevalent Quranic verse is, **"By no means shall ye attain righteousness unless you give freely of that which you love" (Ali Imran: 92)**. Although Waqf is not expressly highlighted in the Qur'an, it is mentioned in the teachings and deeds of the Prophet Muhammad (pbuh). In one such saying the blessed Prophet (pbuh) said: **'when a person dies all their actions come to an end except for three: ongoing charity, knowledge from which people continue to benefit and righteous children who pray for them'**. (Sahih Muslim). The ongoing charity to which the Prophet (pbuh) referred is Waqf. Since the time of the Prophet (pbuh), Waqf generally took the form of a donated property or an institution to help others.

The Faqihs and the jurist also supported their views by evidence special to waqf. Narrated by Ibn Omar as saying; "Omar acquired an exceptional piece of land in Khaiber where he came to see the Prophet s.a.w and consulted him in connection therewith". The Prophet s.a.w said **"If you will, you can withhold the property so that it cannot be sold, granted or bequeathed. The proceeds can be distributed to the poor, the kinsmen, the captives, in the way of God, the guests and the wayfarers."** Therefore, Omar accordingly dedicated the property and the income to the poor and relatives and on freeing the slaves and on the services rendered to travelers and on hospitality. The administrator (or manager) shall have the power to take some of the income and the rest of it for feeding others, not accumulating riches thereby. (Sahih Al Bukhary)

Religious waqf is revenues confined by the mosque and real estate to be spent on mosque's maintenance and running expenses. Religious waqf in any society adds to social welfare of any community because it helps to satisfy the religious needs of people and reduce the direct cost of providing religious services for any future generation.

Philanthropic Waqf is the other kind of waqf. It aims at supporting the poor segment of the society and all activities that are of interest to people at large such as public utilities, the poor and needy, libraries, scientific research, education, health services, care of animals and environment, lending to small businessmen, parks, road, bridges, dams etc.

The three main characteristics of waqf land are:-

- i. Perpetuity – waqf donates legally remain binding forever. This waqf cannot be limited by time or temporary in nature.
- ii. Inalienability – once the declaration is made and valid, the subject matter of waqf passes out the ownership of the waqif (founder) and it cannot be alienated or transferred either by the waqif or the muttawali (trustee) nor to their heirs can take it by way of inheritance.
- iii. Irrevocability- lack of power of the donors to revoke his donation. The waqf is effective and binding as soon as the declaration made by donor.

These three characteristics are upheld by the majority of legal scholars in all generations including today.

4. WAQF IN MALAYSIA.

According to Muslim Law Enactment No 4 of 1955, most of the states in Malaysia deal with two types of waqf, namely waqf 'am' (general waqf) and waqf 'khas' (special or private waqf). Section 2 of the Enactment defines these two waqf as follows: "waqf am" means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognised by Islamic law, and includes the property so dedicated. While "waqf khas" means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognised by Islamic law, and includes the property so dedicated, the income of which is to be paid to a person or persons for purposes prescribed in the waqf. Waqf 'khas' must abide the purpose of the donors while 'waqf 'am' can be used for any purposes without violating the syara'.

The Department of Waqf, Zakah and Hajj Malaysia stated that in accordance with the provision laid down in the state Enactment, waqf assets in Malaysia are allocated under the State Islamic Religious Councils (SIRC) as the sole trustee of each state. The term 'sole trustee' implies that the Religious Councils of each state have been legally appointed by their respective legislations to supervise all the waqf assets and be responsible for their management and development. No other parties or bodies are entitled to hold trusteeship power.

Table 1: Inventory of Waqf Land Areas by each State

No	States	Areas of Waqf Land (Hectares)		Total Areas (Hectares)	Values of Waqf Land (RM) -Estimation
		Am	Khas		
1.	Johor	1,954.58	1,783.50	3,738.08	7,000,000.00
2.	Kedah	-	448.84	448.84	
3.	Kelantan	Data not available	Data not available	129.55	9,821,000.00
4.	Malacca	201.54	1,230.39	1,432.79	6,021,657.00
5.	Negeri Sembilan	Data not available	Data not available	8.73	Data not available
6.	Pahang	Data not available	Data not available	723.82	Data not available
7.	Perak	Data not available	Data not available	2,683.40	Data not available
8.	Perlis	2.74	14.49	17.24	1,337,998.00
9.	Pulau Pinang	-	546.56	546.56	850,000,000.00
10.	Sabah	-	20.29	20.29	Data not available
11.	Sarawak	6.86	4.04	10.90	1,416,781.90
12.	Selangor	18.79	0.44	19.23	200,000,000.00
13.	Terengganu	Data not available	Data not available	125.71	7,412,066.50
14.	Wilayah Persekutuan	1.82	0.05	1.87	27,910,600.00
	TOTAL	2,186.33	4,048.60	9,907.01	1,110,920,103.40

Source: Jabatan Wakaf, Zakat dan Haji (2007)

Table 1 above shows the distribution of waqf land areas for each state. Johor has the largest waqf land areas but Pulau Pinang has the highest estimated land values. The estimation of total amount of more than RM1 billion suggests that if this land is well managed and developed, it can ensure greater return not only to the trustee but to the community and nation at large.

Malaysia also practices the three main characteristics of waqf. Various statutory provide that waqf declaration is irrevocable especially when the title is registered to SIRC. A waqf cannot be sold or transferred by the waqif or be inherited by any person.

5. ISSUES & PROBLEMS RELATED TO WAQF LAND MANAGEMENT IN MALAYSIA

According to Megat Mohd Ghazali (2007), waqf significantly possesses huge potential. However, it is still subjected to several problems that hinder the development. Among others are physical factors, size of the land, legal aspects, illegal trespassing by the non Muslims and the most important issue is lack of management and administration skills of the officers in the Religious Council. Elaborations of the issues are as the following:

1. Financial –

Mohd Tahir et al, (2005) declare that there is high economic potential of waqf land especially lands located in urban areas. They stated that the main problem of developing waqf land is financial sources. State Islamic Religious Council does not have ample fund to finance development as its income is so restricted to low properties rental, zakah and donations. The income is very low compared to the cost of planning and the project prepared for the assets. Sometimes the Religious Council has reported deficits in its total income. Besides, it has received no significant financial aid from the government. The Religious Council also does not possess a sound financial mechanism to run and manage the waqf land professionally. Therefore, the Council constantly relies on investment or loans from trusted institution that is allowed by the Shari'ah.

Siti Mashitoh (2006) informs that other financial agencies are reluctant to give their co-operation to the SIRC in developing waqf since they believe that there will be no adequate returns to their investment. Contracting debt for financing the development will also go beyond the limitations of the basic principles governing waqf. The reason is that there is a fear that mortgage waqf assets may be lost if the debt cannot be recovered. Other corporate members are not interested in participating in any projects held under waqf as its operation through rental or leasing may need long time to receive their shares. With the absence of the financial and professional assistance, waqf assets have been left without proper long-term or short-term development plans.

2. Legal

Megat Mohd Ghazali and friends (2007) identify that there are several legal issues that obstructing the development of waqf land. The main one is the diversity of waqf jurisdiction among the states which creates different understanding and interpretations. This leads to different kind of fatwas among the states. Different interpretation and conservative understanding will jeopardise the waqf development. Malaysia's Prime Minister requested the Muslim jurists to study and come up with a fatwa which allows the 'waqf khas' to be developed into more economical and commercialised development instead of the intended development by the donors. He hoped that commercialized development will give greater benefits to the Muslims but at the same time the donors' wish will not be neglected. (Berita Harian 9 June 2007)

There is a need to study the issues of fatwas related to contemporary fiqh where the Muslim jurists and Muftis can find flexibility in imposing the fatwas onto the waqf land. According to a research done by Mohd Tahir Sabit (2005), the Muslim jurists seem to be inactive and lack of ijtihadi endeavour in facilitating the jurisdiction related to the development of waqf land. Most ulama still rigidly follow the Shafie rules applicable to waqf and are reluctant to study the availability of other rules (namely Hanafi, Hanbali or Maliki) which are also established rules in waqf jurisdiction. Some of the religious councils implement different approaches in managing and developing the waqf land. Malaysia basically follows 'mazhab' Shafie

in the ruling of waqf land. However, certain Religious State Councils find the ruling is too rigid thus limit the development of waqf land. Therefore, these Religious Councils have learned, studied and followed established 'mazhabs' such as Hanafi, Maliki and Hanbali for certain development according to certain suitable circumstances. This situation creates different understanding, interpretations of rules and fatwas that lead to diversified methods of managing waqf lands among the Religious State Councils. This diversification may reflect lack of cooperation between Religious Councils in Malaysia.

Another issue is that there are certain states in Malaysia which have been quite established in waqf development compare to others. Asmak Ali, Baharudin Sayin and Salahudin Suyurno (2006) discover that every Religious State Councils has their own waqf law. Among the states, Selangor has come up with the largest number of sections that have been upgraded to 20 sections from 9 sections. This statement is also supported by Megat Mohd Ghazali (2007) which stated that only Selangor has a special jurisdiction namely 'Enakmen Wakaf Negeri Selangor' 7/1999 that provides comprehensive and systematic management on waqf land. Without this enactment, there is no detail procedure in managing and administering the waqf land. Others states have yet to explore the success of Selangor before following the step.

Another main issue highlighted by SIRC as reported by Siti Mashitoh (2006) is the imposition of Civil and Federal laws that have to be applicable on the administration of waqf assets. This application creates conflict since the Shari'ah law and common law are of different bases.

3. Administrative and Management Issue

According to Siti Mashitoh (2006), almost all State Islamic Religious Councils (SIRC) faced similar administration problem which is lack of qualified officers. This seems to be the result of the inadequacy amount of revenue derived from these assets to cover the expenses of managing the assets. Most of the states have appointed only two officers to manage waqf affairs with the help of contract staffs.

Most of the State Islamic Religious Councils (SIRC) in Malaysia except for Johor, Malacca and Selangor, do not appoint specific officers to supervise waqf assets. It is also regretted that almost none of the administration personnel has any training or competency in investment analysis, project management, property evaluation or any experiences that are relevant to the job. They are usually administrators who are assisted by clerks, typist or accounts officers. This finding is also in accordance with Kamarudin Ngah (1992), who focused on problems underlying the waqf land especially in Pulau Pinang. He acknowledges that most of the officers and their subordinates in charge of waqf land have no or little experience and knowledge of the property management.

4. Claim and objection by heirs of the founders

Religious Councils also deal with a number of claims from the heir of the waqif (founder of waqf). This often occurs in the case of waqf am as waqf khas for specific purposes is very clear and traceable. There are waqf deeds which are blurred and

illegal. This has allowed the heirs of the founders to claim the land as their rightful inheritance.

5. Location and size –

The location of waqf land in Malaysia has been influenced by the polarization of population. Historically, Malays who are Muslims reside the rural area and this contributes to the fact that most waqf land exist outside the city centre or development corridor. However, waqf lands in Penang is different and mostly are located in main area because the existence of Muslims traders in Georgetown during those days. Hence, waqf land in Penang is located in prime and valuable area. From almost 89 thousands acres of waqf land in Malaysia, only 2% of the lands are located in prime development areas of Selangor, Kuala Lumpur and Penang. In Johor, only 1% of the waqf land is located in Johor Bharu.

Besides the unstrategic location, the case becomes more complicated if the lands are very small and scattered in different places. This leads to difficulties in administrating and developing the waqf land. The small size of land makes it uneconomical to develop especially for income generating uses. Therefore, the lands have been neglected as the Religious Council concerned has no interest in developing them.

6. Occupied by Non-Muslims

Most of the lands located in prime areas have high land values and the value is expected to continue increasing. This somehow creates a conflict since some of those lands have been occupied by non Muslims. According to Siti Mashitoh (2006), this dilemma occurs long before the formation of SIRC, dated back in 1930 especially in Penang. There are cases where the lands have been mortgaged to the non-Muslims. It is almost impossible for Religious Councils to reclaim the land due to its high value. Unless Religious Council has good funding to compensate the land, those lands perhaps will remain to be used by the non Muslims. There is no legal provision that empowers the SIRC to reclaim those lands except they have to pay high amount of payment to redeem the land. Apparently this is something unattainable since the Religious Councils do not have the money.

There are also cases of trespassing by the non-Muslims into this land. The lack of provision in many of the states to provide penalty for this trespassing has left some of these trustees helpless to resolve such problems.

7. Status of waqf

As mentioned earlier, there are two types of waqf namely waqf 'khas' and waqf 'am'. Between the two, only waqf 'am' can be manipulated into uses that are appropriate with income generating development. A simple illustration to assist the explanation is as below,

Table 2: Types of Waqf Institutions

Beneficiaries Type	Religious use	Philanthropic use
Family	A	B
General Public	C	D

There are mainly four types of waqf institutions as illustrated above. From the perspectives of property alleviation or income generated development, waqf type A, B and C are not relevant since these are waqf 'khas' where A and B are meant for family benefits while type C focuses on religious purposes. Only type D is allowed for income generated use. In Malaysia, most of the waqf lands are designated for Wakaf khas purposes. According to Hasnol Zam Zam (2007), in Johor, for example, almost 73% of the waqf land is waqf 'khas'. Only 27% from 70,427 acres is meant for waqf 'am'. This phenomenon also exists in all other states where waqf khas is dominantly allocated compared to waqf 'am'.

Even though the waqf land is located in the development areas, being designated as waqf 'khas' limits the land to be used as income generating development.

8. Others

Among other issue is the surrounding land uses that impacts the development and management of waqf land. For example, there is a piece of waqf land in Penang which is located in between Chinese retail area and a Chinese temple. The land is abandoned as thrash disposal area. Besides, waqf land is situated in inappropriate land use area which has been gazetted by the Local Authority. Perhaps the assets is waqf 'khas' meant for cemetery, however, according to Structure or Local plan, the gazetted area is for high class commercial area. This creates conflict of use between Local Authority and SIRC.

6. STRATEGY

There are numerous researches in solving the issues but most of them are merely suggestions and not wholly implemented. Therefore, the successes of the strategies are yet to be tested and awaited.

i. Administrative strategy

There is a need of a positive reformation to bring an upgraded system so the administration will be efficient and implement better duties as waqf trustee. SIRC involves in many tasks regarding Islamic matters of the state including waqf and zakat. However, there is lack of capable officers to run all the work. There is obviously a need for another institution in managing the land on behalf on the SIRC. Taking an example of Singapore in managing the waqf land Singapore where Singapore Religious Council has established another institute called Warees. The Council is the main trustee but Warees has been given the responsibilities

to manage and develop the waqf assets. Warees concentrate on the commercial function of the assets.

With the delegation of works, the SIRC's can focus on other issues as well as strengthening their capabilities in monitoring the development of waqf assets. Another way to manage the waqf assets efficiently is to ensure good returns that can be used for various welfares. Habib Ahmad (2004) suggests establishing a waqf management firm that would be responsible not only to enhance the existing waqf assets by unlocking their value but also to create new waqf institution.

SIRC must start hiring more qualified persons who have Islamic educational background and capable in managing the property and familiar with economic studies. Besides that, collaboration with professionals to do the feasibility studies in developing the land must also be undertaken. Officers with good vision and administering skills will be driven to develop the land in a more progressive and innovative manner.

ii. Financial Strategy

Years of studies have created a lot of awareness in the importance of waqf institutions. Community as well as corporation has realized their roles in contributing towards the waqf land. According to Kamaruddin Ngah (1992), previously, SIRC found it difficult to get loans from Bank Islam and Tabung Haji. However, recently both institutions are more helpful where they are co-sponsoring the development of waqf Ahmad Dawjee in Federal Territory of Kuala Lumpur for a commercial building.

Another latest contribution to waqf fund is investment. Johor Islamic Religious Council has established a scheme of "Saham Waqf" which encourages the community to donate money as investment instead of donating properties. Some might find it hard to donate a piece of land or other landed property, however, many are willing to put aside some amount of money for charity purposes on a monthly basis. The returns of the investment will not be in monetary terms but rather in terms of 'pahala' or ongoing good deeds for hereafter. The contribution by public will create a sound amount of money for development of waqf. The 'Saham waqf' Johor has successfully constructed a six-storey commercial building with the cost of RM4 millions in 1995. Up to 2005, Johor Religious Council has earned up to RM1.2 millions from leasing the premises (Noh Gadot, (2006).

In September 2007, in the 9th Malaysia Plan, the government announced the allocation of RM250 millions into National Waqf Federation. The Federal Government has shown interest and concern in waqf land development. However, the fund does not guarantee the administration and management problem will be alleviated since there are SIRC's that still obscure in their strategy and development planning.

iii. Legal strategy.

Monzer Kaft (1999) stated that, "we must revise our classical Fiqh in areas that promote the establishment of new endowments and improve the benefits derived from existing one". Everything related to waqf is the case of ijtihadi, therefore, all jurists agree that the purpose of

waqf development must lead to charity and good intention whether religious or philanthropic purposes.

A study done by Mohd Tahir Sabit and Abdul Hamid (2005) showed that there are two type of legislations exist in Malaysia; the well drafted and reformed legislation such as in Selangor and Johor and the old or the traditional legislation such as those of Kedah, Terengganu and other states. The reformed legislation accepts contemporary waqf as well as allows land to be sold and relocated by using istibdal/ibdal methods. These states refers to the hadith recited by Ibn Tamiyyah; "in the precedent of Umar, the Prophet's companion, once relocated the mosque in Kufah, for such action was deemed more beneficial for greater interest of the Muslim". Therefore, Ibn Tamiyyah concluded that a waqf property can be sold or disposed of in order to build or get another one, if such action is taken for enhancing and increasing the value of the property.

Istibdal means taking the new assets to substitute the old one, i.e. buying another asset to replace the older one. While ibdal means the discontinuance of a waqf in return for money or assets. This application will allow waqf land in unstrategic location to be moved into another location and those small sizes and scattered waqf land could be clustered in a more suitable location with more economical size to be developed.

v. Efficient Database System

The very simple thing to manage yet not applicable is the waqf land data. Many SIRC's do not have the efficient system in storing the data. Most of the systems are not reflective of the increasing technology era in Malaysia. There are several SIRC's such as Johor, Penang and Kuala Lumpur have a competent system in restoring the data. One of the famous data storing system is Geographical Information System which allows the waqf land to be displayed on a location map with the attributes.

7. CONCLUSION

Waqf development is aimed to provide its benefits to the community with charity purposes. Waqf assets undeniably have abundant potential to increase the economy of Muslims and it also can sponsor social and culture activities. There are proven potentials of waqf to alleviate socio-economy problem as in many Arab countries such as Jordan, Kuwait and Egypt where the waqf institutions have contributed in the socio-economy development. Hence, the development of waqf institution will help to narrow down the gap between the rich and the poor in Malaysia. Besides, good management will spread the charitable property wholly in systematic, effective and comprehensive methods. The development of the land and enhancement of the institution also ensure that waqf land is not static but it must be productive and effective. The development will stimulate and encourage the Muslims to perform a jihad in Islam.

Islam demands the followers to establish and upgrade the economic strength for spreading the Islamic civilization to the whole world. In case of Malaysia, firstly, the waqf institution needs to be significant by solving the problems faced by the SIRC's. The SIRC's management and decisions must reflect the contemporary fiqhi issues of waqf land. There is

a need for standardization of legislation within the SIRC's to ensure the better cooperation and administration of waqf land.

8. AREAS OF CONTRIBUTION AND FUTURE STUDY

According to Habib Ahmed (2004), the total waqf in Malaysia is estimated to be 89 thousand acres. Waqf in Malaysia is mainly religious in nature and very few are income generating. There are large numbers of these lands which have been used as cemetery, for example, almost 70% of the total waqf land in Johor is reserved for cemetery area, 26% for mosque and surau and the remaining 4% of the land are reserved for other purposes. This scenario also occurs in most of the states where the highest provision is made on cemetery and other religious purposes. This may be due to the rigid thinking of people in earlier years that charity is only related to the religious activities. Although waqf is largely known for its charitable and pious purposes, it can still be developed into something more economical.

Currently, lands that are located in urban areas give economic loss to the Councils because many remain undeveloped. An urban area which has land with high values certainly could not allow being abandoned or unutilized as it will be a waste to the economic of the area. As urban planners, land in urban areas is treated as prominent assets or estates that need to be managed and well developed. Therefore, unused urban land due to its status as waqf land need to be studied understood and proposed with the best solutions so that the land will be developed to its highest and best use according to the waqf law.

In Malaysia, each State Islamic Religious Council plays a crucial role in administering, managing and developing. Even though there are numbers of strategies suggested and financial contribution, there are religious councils that are still uncertain in their management. Definitely, there are Religious Councils that have more awareness and innovative in executing their responsibilities. Johor, Selangor and Federal Territory of Kuala Lumpur are among the progressive states in developing and enhancing the waqf assets and values. Pulau Pinang Religious Council is also actively playing its role but it faces too many problems and issues that result in adversity to develop the waqf land. Meanwhile, Johor has a waqf corporation to manage all the assets. In terms of jurisdiction, Johor Islamic Council has come up with the latest ijtihadi to cope with the contemporary fiqh issue. This enables Johor to come up with solutions to develop more waqf land as well as to create more assets by allowing temporary waqf. Besides Shafie jurisdiction, Johor also studies Maliki Jurisdiction in formulation of fatwa regarding waqf land. Federal Territory Religious Council and Johor Religious Council also have been practicing istibdal method so there are lands which have been developed using this method.

Among these SIRC's, is there actually a state that can be substantiated as a model for waqf land administration? What should be the criteria to assess these land administration issues?

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